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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Docket No. NHTSA-2014-0032

Aston Martin Lagonda Limited;

Receipt of Petition for Temporary Exemption from

New Requirements of Standard No. 214

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of a petition for a temporary exemption from new requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 214, Side impact protection; request for comment.

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Aston Martin Lagonda Limited (Aston Martin) has petitioned the agency for a temporary exemption from new pole and moving deformable barrier test requirements of FMVSS No. 214. The petitioner states that compliance would cause Aston Martin substantial economic hardship and that it has tried in good faith to comply with the standard. NHTSA is publishing this document in accordance with statutory and administrative provisions, and requests comments on the petition. NHTSA has made no judgment on the merits of the petition.

DATES: If you would like to comment on the petition, you should submit your comment not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Deirdre Fujita, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, Washington, DC, 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820.

ADDRESSES: You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help and Information” or “Help/Info.”
- Fax: 1-202-493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
Instructions: All submissions must include the agency name and docket number.

Note that all comments received will be posted without change to

<http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. Telephone: (202) 366-9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under FOR FURTHER INFORMATION CONTACT. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts is provided in the Safety Act to enable the agency to give those manufacturers additional time to comply with the Federal safety standards. The Safety Act authorizes the Secretary to grant a temporary exemption to a manufacturer whose total motor vehicle production in the most recent year of production is not more than 10,000 motor vehicles, on such terms as the Secretary deems appropriate, if the exemption would be consistent with the public interest and the Safety Act and “compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.” (49 U.S.C § 30113(b)(3)(B)(i).)

NHTSA established 49 CFR Part 555, Temporary Exemption from Motor Vehicle Safety and Bumper Standards, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act (49 U.S.C. Chapter 301).¹ A manufacturer is eligible to apply for a hardship exemption if its

¹ While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a “temporary basis,” (49 U.S.C. 30113(b)(1)), the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency’s decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer’s ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

b. FMVSS No. 214

In 2007, NHTSA published a final rule upgrading FMVSS No. 214.² The rule incorporated a dynamic pole test into the standard, requiring vehicle manufacturers to assure head and improved chest protection in side crashes by way of technologies such as side curtain air bags and torso side air bags. Among other things, the technologies improve head and thorax protection to occupants of vehicles that crash into poles and trees and vehicles that are laterally struck by a higher-riding vehicle. The final rule adopted use of two advanced test dummies in the new pole test, representing occupants ranging from mid-size males to small females.³ The final rule also enhanced the standard's moving deformable barrier (MDB) test by replacing the then-existing 50th percentile adult male dummy used in the front seat of tested vehicles with the more biofidelic ES-2re mid-size male dummy, and by using the SID-II's 5th percentile adult female dummy in the rear seat.

The pole test requirements are being phased in, starting from 2010 for most vehicles (see S9, FMVSS No. 214) and ending with most vehicles manufactured on or after September 1, 2014 required to meet the requirements. Excluded from the phase-in are vehicles that are manufactured by an original vehicle manufacturer that produces or assembles fewer than 5,000 vehicles annually for sale in the United States ("small volume manufacturers")(S9.1.3(a)(1)). Under FMVSS No. 214, small volume

² 72 FR 51908 (September 11, 2007); response to petitions for reconsideration 73 FR 32473 (June 9, 2008), 75 FR 12123 (March 15, 2010).

³ A test dummy known as the ES-2re represents mid-size adult male occupants. A test dummy known as the SID-II's represents smaller stature occupants. The SID-II's is the size of a 5th percentile adult female.

manufacturers are not subject to the phase-in, but must certify the compliance of their vehicles manufactured on or after September 1, 2014, to the pole test.

In addition, FMVSS No. 214 provides that the pole test does not apply to convertibles manufactured before September 1, 2015 (S9.1.3(d)(1)).

The enhanced MDB test is also being phased in (see S7.2.1, FMVSS No. 214) based on the same phase-in schedule as the pole test. Excluded from the phase-in are small volume manufacturers (see S7.2.4(a)(1)). Under FMVSS No. 214, small volume manufacturers are not subject to the phase-in, but must certify the compliance of their vehicles manufactured on or after September 1, 2014 to the enhanced MDB requirements.

FMVSS No. 214 also provides that the enhanced MDB requirements do not apply to convertibles manufactured before September 1, 2015 (S7.2.4(a)(3)).

According to Aston Martin's petition, the manufacturer currently manufactures approximately 4,000 Aston Martin brand vehicles per year worldwide. Thus, the requirements that are the subject of the petition are FMVSS No. 214's pole and enhanced MDB requirements, which apply to petitioner's sedans (coupes) manufactured on or after September 1, 2014, and to the convertibles manufactured on or after September 1, 2015.

c. Summary of Petition⁴

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Aston Martin has submitted a petition asking the agency for a temporary exemption from the new pole and MDB requirements of FMVSS No. 214⁵ for the petitioner's DB9 and Vantage models. (Aston Martin states that the two other models it produces—the

⁴ To view the petition, go to <http://www.regulations.gov> and enter the docket number set forth in the heading of this document.

⁵ NHTSA understands the petitioner as referring to the "vehicle-to-pole requirements" in S9 of FMVSS No. 214 and to the "moving deformable barrier (MDB) requirements" in S7, specifically the requirements in S7.2, "MDB test with advanced test dummies."

Vanquish and the Rapide S—will be compliant with the pole and enhanced MDB tests on September 1, 2014 (regarding the coupes) and September 1, 2015 (regarding the convertibles).) The basis for the application is that compliance would cause Aston Martin substantial economic hardship and that the petitioner has tried in good faith to comply with the standard.

Aston Martin describes itself as a corporation organized under the laws of England. Petitioner states that it “has never manufactured in any year (calendar or model) more than 7,500 Aston Martin brand vehicles.”⁶ It sells its cars through a network of 150 dealerships worldwide. Petitioner states that since the sale by Ford in 2007, Aston Martin “has been an independent manufacturer not connected to any large OEM.”

The petition requests an exemption for the following periods:

- DB9 coupe model production from September 1, 2014 until August 31, 2016;
- DB9 convertible model production from September 1, 2015 until August 31, 2016;
- Vantage coupe model production from September 1, 2014 until August 31, 2017; and,
- Vantage convertible model production from September 1, 2015 until August 31, 2017.

The petitioner believes that 670 vehicles would be covered by the requested exemption. This would be the total number of exempted vehicles imported into the United States over the entire exemption period.

⁶ The petitioner provided confidential production figures to support its claim.

According to the petition, Aston Martin originally planned for the “roll out of the next generation” DB9 and Vantage models to meet the new pole and MDB requirements of FMVSS No. 214. [Emphasis in text.] The petitioner states that Aston Martin started development work on its two models (the Vanquish and the Rapide) that would not be moving into a new generation by the compliance dates of the new pole and MBD requirements. Petitioner states that these two models are on track for meeting the new FMVSS No. 214 requirements by the date specified by the standard. Petitioner states that Aston Martin “did not foresee the need to reengineer the current DB9 and Vantage for new MDB and pole test compliance because these models were scheduled to be replaced by the next generation vehicles.”

However, Aston Martin explains, the arrival of the next generation of the DB9 and Vantage models has been delayed. Petitioner states:

Because of little market recovery since 2009, Aston Martin sales volumes have not been sufficient to fund the investment required to deliver the original 2011 plan. Due to these funding constraints, spending on the next generation of vehicles was minimal, and Aston Martin could not initiate the start of FMVSS 214 compliance programs on DB9 or Vantage. Therefore, the company investigated options to deliver more cash into the business. It was not until 30 April 2013 that Aston Martin received a capital increase of £150m into the business from Investindustrial in return for a 37.5% interest in the company. This capital injection provided the funds needed to deliver the next generation of vehicles. In short, Aston Martin needs the exemption to continue the DB9 and Vantage USA production until the replacement vehicles are ready.

The petition provides information on the effect that compliance—or a failure to obtain an exemption—would have on the manufacturer. Petitioner states that the DB9 and Vantage models will not comply with the pole and enhanced MDB test requirements “without complete revision of the side air bag systems and complete validation of crash

testing.” Aston Martin states that developing completely new pole and MDB test compliance systems for the vehicles “would be cost prohibitive given that these models will cease USA production in the near term and the cost of amortization over the approximately 670 cars at issue would be economically infeasible.”

Aston Martin indicates that its past three year financial statements show a cumulative loss of approximately £39 Million. Petitioner believes that the effect amounts to substantial economic hardship “above and beyond the substantial economic hardship that Aston Martin is presently experiencing.” Among other matters, petitioner states that approximately \$30 million expenditure would be required to achieve compliance, and the finances needed to meet the new pole and MDB requirements are “just not available.”

In addition, petitioner states, “The new investor in Aston Martin has committed its investment money for the next generation vehicle—as obviously the longer term hopes for the company depend on the future models. Aston Martin funding needs to be focused on the next generation of vehicles to ensure the recovery of the company and protect its dealer network.”

Aston Martin provides information related to its efforts to comply with the standard. Petitioner states that its challenges to reengineer the DB9 and Vantage relate to: its being a small organization with limited skilled internal resources; at least two global restraint system suppliers have indicated that Aston Martin’s volumes are too low for the suppliers to be interested in its projects; “few external CAE/Structural suppliers have experience in Aston Martin’s unique bonded aluminum structural concept; and the need to also engineer compliance with FMVSS No. 226, “Ejection mitigation.” Petitioner states that “for Aston Martin

to find an interim MDB/Pole solution for only 670 cars and then to be compelled to reengineer FMVSS 208, 214 and 226 compliance for 2017 would be a huge investment which Aston Martin neither has nor can justify.” [Emphases in text.]

Aston Martin believes that the number of vehicles to be sold in the US during the exemption would be “very low and the number of annual miles driven in Aston Martin vehicles is very low (on average 2617 miles).” Further, Aston Martin contends that “denial of the exemption request here will have a negative effect on US employment.” Petitioner believes that if the petition were denied, “for a 2-3 year period US dealers would be restricted in their product range and would only be able to sell Vanquish and Rapide S, which would impact their ability to maintain a financial viable operation.” Aston Martin notes that the DB9 was tested to the pole test with the ES-2re adult male dummy and passed the injury criteria, but did not do so with a compliance margin sufficient for the manufacturer to certify compliance based on a single test.

d. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested exemption. The agency has tentatively concluded that Aston Martin’s petition is complete and that the petitioner is eligible to apply for a temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

The agency seeks comment from the public on the merits of Aston Martin’s petition for a temporary exemption from the pole and enhanced MDB requirements of

FMVSS No. 214. After considering public comments and other available information, we will publish a notice of final action on the petition in the **Federal Register**.

Issued on: March 20, 2014

Claude H. Harris
Acting Associate Administrator for Rulemaking

Billing Code: 4910-59-P

[Signature Page for Notice of Receipt of Petition for Temporary Exemption from Aston Martin; Standard No. 214]

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